

**BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION**

IN RE: ER Johnson Rd Hotel/Inv. LLC )  
Dist. G02, Block 32, Parcel 00428 ) Shelby County  
Commercial Property )  
Tax Year 2000 )

## INITIAL DECISION AND ORDER

## Statement of the Case

The subject property is presently valued as follows:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$1,299,400	\$7,452,600	\$8,752,000	\$3,175,440

An appeal has been filed on behalf of the property owner with the State Board of Equalization. The undersigned administrative judge conducted a hearing in this matter on June 6, 2007 in Memphis, Tennessee. The taxpayer was represented by Fred M. Ridolphi, Jr., Esq. The assessor of property was represented by John Zelinka, Esq.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of a hotel constructed in 1999 located at 2000 Poplar Pike in Germantown, Tennessee.

The assessor of property originally valued subject property for tax year 2000 as follows:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$1,299,400	\$ -0-	\$1,299,400	\$519,760

On August 28, 2001, the assessor of property initiated a back assessment for tax year 2000. Pursuant to Tenn. Code Ann. § 67-1-1005(d), a citation was issued stating that a hearing would be conducted on October 9, 2001. For whatever reason, the hearing was never held.

On October 10, 2001, the assessor of property issued a correction of error pursuant to Tenn. Code Ann. § 67-5-509. The assessment change notice indicated the value had been increased to \$8,752,000 as summarized above.

The taxpayer filed a timely appeal with the State Board of Equalization on November 2, 2001. The appeal was effectively held in abeyance pending resolution of ongoing litigation.

The taxpayer contended that the back assessment should be dismissed because the hearing scheduled for October 9, 2001 was canceled and never rescheduled. In support of this position, the taxpayer relied on the decision of the Assessment Appeals Commission in *Lemm Services, Inc.* (Shelby Co., Tax Year 1996).



The assessor of property conceded that no hearing has ever been conducted since the issuance of the citation on August 28, 2001. The assessor did not offer any authority in support of upholding the back assessment.

The administrative judge finds that the taxpayer's motion is well taken and should therefore be granted. The administrative judge finds that although the back assessment was properly initiated it was never completed. Moreover, the administrative judge finds the appropriate procedure for adding improvements to the tax rolls that have escaped taxation is via the back assessment/reassessment process. See Tenn. Code Ann. § 67-1-1001 et seq. The administrative judge finds that Tenn. Code Ann. § 67-5-509 cannot be utilized to make what is properly a back assessment.

#### ORDER

It is therefore ORDERED that the following value and assessment be adopted for tax year 2000:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$1,299,400	\$ -0-	\$1,299,400	\$519,760

It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

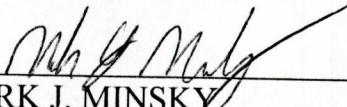
1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **“must be filed within thirty (30) days from the date the initial decision is sent.”** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or



3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 26th day of June, 2007.

  
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MARK J. MINSKY  
ADMINISTRATIVE JUDGE  
TENNESSEE DEPARTMENT OF STATE  
ADMINISTRATIVE PROCEDURES DIVISION

c: Fred M. Ridolphi, Jr., Esq.  
John Zelinka, Esq.  
Mr. Jerry R. Caruthers  
Tameaka Stanton-Riley, Appeals Manager